

REMARKS

The preceding claim amendments and the following remarks are submitted as a full and complete response to the Office Action issued on August 13, 2008. Claims 1, 3 and 4 have been amended. The details of the claim amendments will be explained below. No new matter has been added. Upon entry of the claim amendments, claims 1-6 are pending.

Objection to the Abstract

Applicants hereby submit a replacement of the abstract into which chemical formulas of the compounds are inserted.

Claim rejections under 35 U.S.C. §112

The Office has rejected claims 1-6 under 35 U.S.C. § 112, second paragraph, as indefinite alleging that it is not clear what happens to the protecting group R3 when the compound for formula 4 is converted into the compound formula 3. While not acquiescing to the propriety to the Office's position in this rejection, Applicants have obviated this rejection by (1) incorporating formula 3' which retains the group R3 (which is either a hydrogen or an amino protecting group of pheynylacetyl group) and (2) reciting that when any of the R2 and R3 is a protecting group, all such protecting groups on the compound of formula 3' are removed to produce the compound of formula 6, which, in turn, reacts with the compound of formula 2. Support for this amendment can be found throughout the specification, for example, paragraph [0019] and working

examples 1 and 2. No new matter has been added. Claims 3 and 4 have been amended in view of the amendment of claim 1. Applicants respectfully submit that the amendment of claim 1 renders this rejection moot and thus that reconsideration and withdrawal of the rejection is respectfully requested.

Double Patenting

The Office has provisionally rejected claims 1-6 as unpatentable over claim 15 of co-pending Application No. 10/577,552¹ (the "552 application") under non-statutory obviousness-type double patenting. Applicants respectfully disagree.

Applicants note that claim 15 has been withdrawn from consideration during the examination of the '552 application after the election in response to the restriction requirement. While Applicants reserve the right to file a divisional application with respect to claim 15, Applicants submit that until then, this rejection is moot. Reconsideration and withdrawal of this are respectfully requested.

¹ As noted in the Interview Summary dated November 19, 2008, the reference to Application No. 10/557,572 is a typographical error of 10/577,552.

In light of the foregoing, Applicants submit that all outstanding rejections have been overcome, and the instant application is in condition for allowance. Thus, Applicants respectfully request early allowance of the instant application. The Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

By



Patrick T. Skacel
Attorney for Applicants
Registration No. 47,948
ROTHWELL, FIGG, ERNST & MANBECK
1425 K. Street, Suite 800
Washington, D.C. 20005
Telephone: (202) 783-6040